

*United States Court of Appeals
for the Second Circuit*



APPELLEE'S BRIEF

74-1459

4-8109

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

UNITED STATES OF AMERICA, APPELLEE

v.

SAMUEL SANCHEZ, APPELLANT

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

BRIEF FOR APPELLEE



DAVID G. TRAGER,
United States Attorney,
Brooklyn, New York 11201.

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Washington, D.C. 20530.

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QUESTIONS PRESENTED

1. Whether the search warrant sufficiently identified the person to be searched.
2. Whether stolen mail found on appellant pursuant to a valid search for evidence of illegal gambling was properly seized.

STATEMENT

Following a jury waived trial in the United States District Court for the Eastern District of New York, appellant was convicted of knowingly possessing matter stolen from the mails in violation of 13 U.S.C. 1708. He was sentenced to 18 month's imprisonment with execution of the sentence suspended; he was placed on probation for three years.

The evidence, which is not in dispute, showed that pursuant to a warrant appellant was searched on January 24, 1972, at the Canopy Lounge, 5612 Clarendon Road, Brooklyn, New York. In addition to betting slips and other items indicating illegal gambling activity which were found on appellant, two bank books and a check for \$400 were found in his sock. Neither the bank books nor the check bore appellant's name. A search of the automobile in which he had just arrived produced additional evidence of gambling violations as well as four more checks drawn on other banks. Appellant was subsequently charged with possession of the bank books and checks knowing them to have been stolen from the mails.

Appellant's motion to suppress the seized items was denied. It was stipulated that the owners of the bank books and payees or makers of the checks had placed the items in the United States mails and had not authorized appellant to have them in his possession.

ARGUMENT

I

THE SEARCH WARRANT SUFFICIENTLY IDENTIFIED APPELLANT AS THE INDIVIDUAL TO BE SEARCHED

Appellant argues that the search warrant did not sufficiently identify him as the individual to be searched since the space on the warrant for insertion of the name of the party to be searched was left blank (App. A-3).^{1/}

^{1/} (App. designates the appendix for appellant).

However, the warrant was captioned "United States v. Sammy Sanchez" and the supporting affidavits contained appellant's name and picture. In these circumstances the omission, was clearly a clerical oversight, and of no significance; it clearly enabled the executing officers to identify appellant as the individual to be searched, cf., Steele v. United States, 267 U.S. 498; United States v. Ventresca, 380 U.S. 102, 108; United States v. Melancon, 462 F. 2d 82, 93-94 (C.A. 5), certiorari denied, 409 U.S. 1038; United States v. Ferrone, 438 F. 2d 381, 389 (C.A. 3), certiorari denied, 402 U.S. 1008; United States v. DePugh, 452 F. 2d 915, 920 (C.A. 10), certiorari denied, 407 U.S. 920; Wangrow v. United States, 399 F. 2d 106, 115 (C.A. 8), certiorari denied, 393 U.S. 933; Fine v. United States, 207 F. 2d 324 (C.A. 6), certiorari denied, 346 U.S. 923. The test in this circuit is whether the warrant designates the place or person to be searched with practical accuracy, United States v. Santore, 290 F. 2d 51, 67 (C.A. 2), certiorari denied, 365 U.S. 834; United States v. Klaia, 127 F. 2d 529, 530 (C.A. 2); United States v. Gomez, 42 F.R.D. 347 (S.D.N.Y. 1967); United States v. Epstein, 240 F. Supp. 80, 83 (S.D.N.Y. 1965). Since the warrant on its face specifically identified appellant as the subject of the search, the omission of his name from the body of the warrant does not invalidate the search.

II

SEIZURE OF THE STOLEN MAIL FOUND IN APPELLANTS'
POSSESSION WAS PROPER

Appellant argues that the seizure of the bank books and checks found on his person and in his car was improper since these items were not specified in the warrant. However, the warrant authorized the seizure of "records of money paid out and collected ... and other paraphernalia which are evidence of a policy betting business" (App. 3). The F.B.I. agent who supervised the search testified that he seized these items because he thought they were records of financial transactions connected with the numbers operation. The agent who actually conducted the search stated that he seized the bank books and checks, which appellant had hidden, because they did not bear appellant's name and it appeared to him that they were possibly stolen mail matter. Under either reasoning the materials were subject to seizure since they were discovered pursuant to a lawful search, Coolidge v. New Hampshire, 403 U.S. 443, 465-467; Alderman v. United States, 394 U.S. 165, 177 n. 10; United States v. Pacelli, 470 F. 2d 67, 70-72 (C.A. 2), certiorari denied, 410 U.S. 983.

Appellant attempts to escape the holdings of these cases by asserting that his possession of the bank books and checks was not incriminating. However, the fact that appellant was apprehended in the act of transporting policy numbers slips certainly provided ample justification for a

belief that the banks books and check were records of the gambling enterprise. By the same token, the fact that appellant was carrying two bank books and a check, all belonging to other people, concealed in his sock hardly raises an inference of innocence. In these circumstances the agents would have been derelict in their duties had they not seized what appeared to them to be either the instrumentalities or the proceeds of criminal activity.

CONCLUSION

For the reasons stated it is respectfully submitted that the order of the district court should be affirmed.

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CERTIFICATE OF SERVICE

I hereby certify that on June ^{17th 1974}, copies of the Brief for Appellee were mailed to counsel for the appellant at the following address:

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